

## Teaming Agreements: Creative Tools For Building And Preserving A Winning Project Team

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When you are ready to go after a project and expect stiff competition, should you go it alone or team with others to increase your chance of success?

*Potential project team members have often collaborated to secure assignments. It is now becoming more prevalent, however, for owners to require formal teaming as a precondition to award and for such teams to include both design and construction teammates, as well as developers and facility operators. These advancements have increased the complexities of teaming and, thereby, the risks. That said, the benefits remain and you can moderate risks through good judgment, proper planning, and formal agreements.*



### Selecting the Right Team for the Job

Teammate selection is critical to success, both in securing and completing an assignment and minimizing risks. Teammates should not only bring name recognition to the table, but they should also possess proven abilities to perform the necessary services for the assignment, in coordination and cooperation with the other team members. In addition, you should avoid teammates with poor claims histories or track records of bringing unreasonable delay or extra work claims.

### Confidentiality Agreements: An Important Tool of Teaming

You may need to disclose trade secrets or other proprietary information in order to contribute to the preparation of a team proposal, such as your most-favored-nation pricing or unique design, construction, or estimating methodologies. While an RFQ/P may provide for some protection from disclosure to third parties, it will not protect against future use or disclosure by your teammates. You can protect such information, however, by signing a proper confidentiality agreement with your teammates prior to the disclosure of such information.

### Teaming's Impact on Proprietary Information

In general, you are automatically the owner of design instruments of service prepared by you or your employees and the copyrights therein. In the context of a team collaboration, however, those rights may get blurred and questions may arise as to who owns the team's jointly created materials and the contents thereof. While the RFP/Q may seek to assign ownership to your client, it will not address claims of ownership among teammates. You can protect your ownership rights, however, by properly memorializing in writing the mutual (if any) and exclusive rights in any such materials and including a copyright mark on your copyrightable materials.

### Avoid Conflicts through a Non-Compete Agreement

You should also be wary of being dropped from a team after con-

tributing significant effort on its behalf. At a minimum, the teammates should agree up front and in writing when and how a teammate may be replaced and reimbursed for its efforts. Conversely, it is also important that you retain a reasonable right to resign from the team. In addition, the teammates should also address whether a teammate may participate on a competing team pursuing the same assignment. To protect yourself in these regards, you should sign a proper non-compete agreement with your teammates at the start of the teaming engagement.

### Teaming: Know Your Shared Responsibilities and Liabilities

Another risk of teaming is to be deemed a partner or joint venturer of your teammates and, thereby, responsible for the actions of your teammates. In New York, a court will determine whether such a partnership or joint venture exists from the conduct, intent, and relationship of the teammates, including: (i) sharing of profits and losses; (ii) ownership of assets; (iii) joint management and control; (iv) joint liability to creditors; (v) compensation; (vi) contribution of capital, effort, skill, or knowledge; and (vii) loans to the organization. To avoid this risk, teammates should avoid actions that might give a third party justification to believe that the team is a partnership or joint venture and the team's proposal and other materials should clarify that the team is not a partnership or joint venture.

### The Benefits of a Robust Teaming Agreement

While teaming has been around for some time, it is often manifested as an informal association. Whenever considering teaming, however, you should consider protecting your rights through a written teaming agreement. Teaming agreements need not be particularly detailed, but they should address the issues discussed above, along with the following: (i) a description of the procurement pursued; (ii) the division of labor and costs for the proposal and the project services; (iii) the decision making process, including client contract negotiation and go/no-go decisions; (iv) grounds for terminating the teaming agreement; (v) the method of resolving disputes among team members; and (vi) a disclaimer of agency rights of any teammate in favor of another.

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